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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DOLORES VALENZUELA, an
individual, on behalf of herself, all other
similarly situated individuals, and other
current or former employees,

Plaintiff,

vs.

BEST-LINE SHADES, INC., a California
Corporation; BEST-LINE, INC., a
California Corporation; JILL
SCHAFFER, an individual, and DOES 1
through 20,

Defendants.

Case No. 19-cv-07293-JSC

Hon. Jacqueline Scott Corley

**JOINT RULE 26(f) REPORT AND
CASE MANAGEMENT
STATEMENT**

Date: February 6, 2020

Time: 1:30 p.m.

Pursuant to the Court's Order Requiring Federal Rule of Civil Procedure (FRCP) 26(f) Report and Joint Case Management Statement (Doc. 3), and Northern District Local Rule 16-9, Plaintiff DOLORES VALENZUELA ("Plaintiff"), and Defendant JILL SCHAFFER ("Schaffer") submit this Joint Rule 26(f) Report and Case Management Statement.

Defendants BEST-LINE SHADES, INC. and BEST-LINE, INC. ("Best-Line"), both California corporations, are currently SOS Suspended and FTB Suspended, respectively. A suspended corporation may not prosecute or defend an action in a California court. (*Ransome-Crummey Co. v. Superior Court*, 54 Cal. App. 4th 1366 (1922); *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.*, 155 Cal. App. 2d 46, 50-51 (1957). The capacity of a corporate litigant to sue or be sued in a federal court is controlled by Federal Rule of Civil Procedure 17, which provides that the capacity of a corporation to sue is determined "by the law under which it was

1 organized." Fed. R. Civ. P. 17(b)(2); *see also Hills Motors, Inc. v. Hawaii Auto.*
 2 *Dealers' Ass'n*, 997 F.2d 581, 584 (9th Cir. 1993). Therefore, Best-Line cannot
 3 participate in the present action, including this Joint Rule 26(f) Report and Case
 4 Management Statement, until they are reinstated. Best-Line will take steps to revive
 5 both of the suspended business entities.

6 **A. STATUTORY BASIS FOR JURISDICTION & SERVICE**

7 On November 5, 2019, Plaintiff filed this wage and hour class action and
 8 Federal Labor Standards Act (FLSA) collective action against Schaffer and Best-Line
 9 (collectively "Defendants") in the California Superior Court of California, County of
 10 Alameda. All parties in this matter have been served. Service on Defendants was
 11 accomplished on November 20, 2019.

12 Defendants' answer was due on December 11, 2019. However, Defendants
 13 requested extensions from Plaintiff three times, and all three requests were granted.
 14 The first extension was until December 20, 2019. The second was until January 10,
 15 2020. Plaintiff has informed Defendants that she intends to file an amended complaint
 16 on or soon after February 6, 2020, once Plaintiff's 65-day period after filing her
 17 Private Attorneys General Act (PAGA) notice with the California Labor and
 18 Workforce Development Agency (LWDA) elapses. Plaintiff agreed that Defendants
 19 may file a responsive pleading once the amended complaint is filed.

20 The parties have met and conferred about the case, as well as about options for
 21 alternative dispute resolution.

22 **B. SUMMARY OF FACTUAL AND LEGAL CONTENTIONS**

23 **Plaintiff's Contentions**

24 Plaintiff filed this putative wage-and-hour class action on behalf of herself and
 25 seeking to represent a proposed class of all individuals who have been employed by
 26 Defendants in California at any time since November 5, 2015. Plaintiff and the class
 27 of individuals she seeks to represent under (FRCP) 23, are current or former non-
 28

1 exempt employees of Defendants in California. Plaintiff alleges that the putative class
2 manufactured window coverings such as blinds and drapes, as well as other home
3 textiles for Defendants, and were subjected to unlawful labor and payroll policies.

4 Plaintiff alleges that Defendants violated various state and federal wage and
5 hour laws. Specifically, Plaintiff alleges that Defendants: (1) failed to authorize and
6 permit rest periods or to pay premium wages in lieu thereof, in violation of California
7 Labor Code § 226.7 and applicable IWC Wage Orders; (2) failed to provide timely
8 meal breaks or premium wages in lieu thereof in violation of California Labor Code
9 §§ 226.7, 512 and the applicable IWC Wage Orders; (3) violated the overtime laws,
10 California Labor Code §§ 510, 1194, 1194.2; (4) violated the minimum wage laws,
11 California Labor Code §§ 1194(a), 1194.2, and 1197; (5) failed to pay all contractual
12 wages owed in violation of California Labor Code §§ 204, 218.5, 223, and 1194 (6)
13 failed to timely pay wages due at termination in violation of California Labor Code
14 §§ 201, 202 and 203; (7) failed to provide timely, complete, rest periods, and/or
15 provide appropriate compensation in lieu thereof; (8) failed to provide timely,
16 complete, meal periods, and/or provide appropriate compensation in lieu thereof in
17 violation of California Labor Code §§ 226.7 and 512; (9) failed to provide
18 reimbursement for necessary business expenditures in violation of California Labor
19 Code §§ 226.7 and 512; (10) knowingly and intentionally failed to maintain and
20 provide accurate employment records and wage statements in violation of California
21 Labor Code §§ 226(a), 1174 and 1175; (11) violated Business & Professions Code §
22 17200 *et seq.*, and (12) retaliated against Plaintiff for the protected activity of
23 requesting her personnel and payroll records from her employer.

24 In addition, in her first amended complaint, Plaintiff will allege two additional
25 violations, which occurred after the filing of the initial complaint: failing to provide
26 personnel records under California Labor Code §§ 1198.5, and failing to provide
27 payroll records under California Labor Code §§ 226.

1 **Defendants' Contentions**

2 Defendants contend that Plaintiff's and the purported class claims are factually
 3 and legally unsupported. Defendants deny the wage and hour allegations against it, as
 4 Plaintiff and the putative class were paid and offered meal and rest breaks in
 5 compliance with the California Labor Code. In addition, there is no evidence to
 6 support that Defendants retaliated against or terminated Plaintiff. The facts will show
 7 that Plaintiff was never fired, that Plaintiff is currently employed and has not suffered
 8 any damages.

9 Defendants will oppose a class certification motion as Plaintiff cannot meet the
 10 prerequisites under FRCP 23.

11 **C. LEGAL ISSUES**

12 See Section B, above.

13 **D. PRIOR & ANTICIPATED MOTIONS & SCHEDULING OF MOTIONS**

14 Plaintiff anticipates significant briefing regarding class certification, as well as a
 15 motion for summary judgment (or partial summary judgment) and motions in limine.
 16 The Parties propose that the Court defer setting a deadline for Plaintiff to move for
 17 certification until after discovery practice, to obtain core class timekeeping and payroll
 18 documents and policies and practices, is completed, and that the setting of all other
 19 pre-trial deadlines be deferred until after the Court rules on Plaintiffs' anticipated class
 20 certification motion, which will significantly affect the scope of this lawsuit and any
 21 trial.

22 Plaintiff will move for certification upon completion of sufficient discovery,
 23 which the Parties have identified. Plaintiff believes she will require at least twelve
 24 (12) months to complete class certification discovery.

25 Defendants anticipate opposition to the class certification motion, as well as a
 26 motion for summary judgment or summary adjudication and motions in limine. Other
 27 motions to be determined as litigation continues.

E. AMENDMENT OF PLEADINGS

Plaintiff is considering amending her pleading to include a PAGA cause of action, and causes of action under California Labor Code §§ 1198.5 and §§ 226, as described above. In addition, Plaintiff intends to amend her pleading to include one additional plaintiff to the action.

F. PRESERVATION OF EVIDENCE

Counsel for the Parties have taken steps to ensure the preservation of all physical and electronic documentary evidence.

G. DISCLOSURES

The Parties have agreed to serve initial disclosures after filing this Joint Report and Case Management Statements, on or by February 14, 2020.

H. ANTICIPATED DISCOVERY & THE SCHEDULING OF DISCOVERY

1. Subjects on Which Discovery May Be Needed, When Discovery Should be Completed, and Whether Discovery Should be Conducted in Phases or be Limited to or Focused Upon Particular Issues

The Parties jointly request that the Court defer setting a discovery cutoff until after the Court rules on class certification issues.

Plaintiff's Statement

Plaintiff will need discovery on all matters set forth in Plaintiff's Complaint including, but not limited to, the following: the certification and maintenance of a class action; policies and procedures relating to compensation, overtime, rest periods, and meal breaks for putative class action members; relevant data such as the total number of putative class action members, compensation for each class action member, daily and weekly hours worked for each class action member, wage statements for each class action member; timekeeping and payroll records of putative class members, and documents relating to labor, payroll and wage-and-hour practices and policies.

1 Plaintiff will meet and confer on the issue of Electronically Stored Information
2 (ESI) and will seek production of computer databases containing time, payroll and
3 other information such as email communications. Plaintiff will request production of
4 ESI in native, electronic form and will request production of deleted and back-up data.

5 As Plaintiff anticipates filing a class certification motion, Plaintiff believes that
6 the discovery obtained in preparation for her class certification motion will also be
7 operative in determining damages and liability at trial, and believe phased discovery is
8 unnecessary in this case.

9 **Defendants' Statement**

10 Similar to Plaintiff, Defendants will need discovery on all matters set forth in
11 Plaintiff's Complaint including, but not limited to, the following: information and
12 documents relating to compensation, overtime, rest periods, meal breaks, policies and
13 practices, facts and circumstances surrounding Plaintiff's alleged retaliatory
14 termination.

15 **2. Limitations on Discovery**

16 At this time, the parties do not propose any changes to the discovery limitations
17 set forth in the FRCP. The Parties propose that the Court set a Status Conference
18 thirty (30) days after the Court enters a ruling on Plaintiff's anticipated class
19 certification motion. Plaintiff proposes that the Court schedule deadlines for post-
20 certification discovery at that time.

21 **3. Electronic Discovery**

22 **(a) Duty to Notify**

23 Plaintiff will be seeking timekeeping, payroll, and any other electronic
24 databases which contain evidence of time worked. This may include the timekeeping,
25 production, security, or other systems that may indicate the timing of work activities
26 at certain times. Plaintiff may need email or other electronic documents relating to
27 wage and hour policies and practices.

1 **(b) Duty to Meet and Confer**

2 The Parties are meeting and conferring as needed with respect to questions of
3 case management and the possibility of mediation.

4 **I. CLASS ACTIONS**

5 Plaintiff will move for certification upon completion of sufficient discovery,
6 which the Parties have identified. Plaintiff will need discovery on all matters set forth
7 in Plaintiff's Complaint including, but not limited to, the following: the certification
8 and maintenance of a class action; policies and procedures relating to compensation,
9 overtime, rest periods, and meal breaks for putative class action members; relevant
10 data such as the total number of putative class action members, compensation for
11 each class action member, daily and weekly hours worked for each class action
12 member, wage statements for each class action member; timekeeping and payroll
13 records of putative class members; documents relating to labor, payroll and wage-and-
14 hour practices and policies.

15 As Plaintiff anticipates filing a class certification motion, discovery will first
16 need to be conducted regarding certification issues, as well as liability and damages
17 issues. Plaintiff believes that the discovery obtained in preparation for their class
18 certification motion will also be operative in determining damages and liability at
19 trial, and believe phased discovery is unnecessary in this case. Plaintiff believes he
20 will require at least twelve (12) months to complete class certification discovery.

21 The Parties propose that the Court defer setting a deadline for Plaintiff to move
22 for certification until after discovery practice, to obtain core class timekeeping and
23 payroll documents and policies and practices, is completed, and that the setting of all
24 other pre-trial deadlines be deferred until after the Court rules on Plaintiffs'
25 anticipated class certification motion, which will significantly affect the scope of this
26 lawsuit and any trial.

27 **J. RELATED CASES**

The Parties are unaware of any present related actions.

K. RELIEF SOUGHT IN COMPLAINT

Plaintiff's Statement

- a. Compensatory damages including wages and overtime wages in an amount according to proof with interest thereon;
- b. A declaratory judgment that each of the Defendants violated Plaintiff's, the Class's, and the FLSA Collective's rights under FLSA, 29 U.S.C. § 201 et seq., the California Labor Code, and applicable IWC Wage Orders as set forth in the preceding paragraphs;
- c. An award to Plaintiff and each proposed Class Member of statutory damages or, in the alternative, actual and liquidated damages for Defendants' violations of FLSA;
- d. That Defendants be found to have engaged in unfair competition in violation of California Business and Professions Code § 17200 et seq.;
- e. That Defendants be ordered and enjoined to make restitution to the Class due to their unfair competition, including disgorgement of their wrongfully-obtained revenues, earnings, profits, compensation, and benefits, pursuant to California Business and Professions Code §§ 17203 and 17204;
- f. That Defendants be enjoined from continuing the unlawful or unfair competition in violation of § 17200 as alleged herein;
- g. Declaratory relief for Defendants' violation of the California Labor Code, California Business and Professions Code, and the FLSA;
- h. That Defendants be enjoined from further acts of restraint of trade or unfair competition;
- i. Premium wages pursuant to California Labor Code §§ 226, 226.7 and 510;

- j. Unpaid wages, liquated damages in an amount equal to the wages unlawfully unpaid, interest thereon, reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a).
- k. Unpaid wages pursuant to California Labor Code § 1194 and liquidated damages pursuant to Labor Code §1194.2;
- l. An order imposing all statutory and/or civil penalties provided by law, including but not limited to, penalties under California Labor Code §§ 98.6, 203, 210, 225.5, 226, 226.3, 226.7, 256, 512, 558, 1174.5, 1194, 1194.2, 1197.1, 2802, relating to all facts alleged in the complaint;
- m. An award to Plaintiff and the Class Members of reasonable attorneys' fees, costs, and interest thereon pursuant to Code of Civil Procedure § 1021.5, California Labor Code §§218.5, 218.6, 226, 1194, 2699(g), and/or other applicable law;
- n. All other relief provided by the FLSA, the California Labor Code, and California Business and Professions Code;
- o. Such other and further relief as the Court deems just and proper; and
- p. Injunctive relief;

Defendants' Statement

Plaintiff's and the purported class claims are factually and legally unsupported. Defendants deny the wage and hour allegations against it, as Plaintiff and the putative class were paid and offered meal and rest breaks in compliance with the California Labor Code. In addition, there is no evidence to support that Defendants retaliated against or terminated Plaintiff. The facts will show that Plaintiff was never fired, that Plaintiff is currently employed and has not suffered any damages.

Defendants will oppose a class certification motion as Plaintiff cannot meet the prerequisites under FRCP 23.

L. SETTLEMENT & ADR

1 The parties are open to mediation and are in the process of coming to a mutual
 2 decision as to whether they will choose to undergo mediation and, if so, which
 3 mediator they will use.

4 **M. CONSENT TO MAGISTRATE**

5 The Parties have consented to Magistrate Jacqueline Scott Corley.

6 **N. OTHER REFERENCES**

7 The Parties do not believe that special procedures, such as reference to binding
 8 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation, are
 9 warranted at this time.

10 **O. NARROWING OF ISSUES**

11 The parties are currently unaware of any issues that can be narrowed by
 12 agreement or motion. However, to the extent that any Party believes that narrowing of
 13 an issue is warranted, the Parties agree to meet and confer in good faith regarding any
 14 such issue.

15 **P. EXPEDITED SCHEDULE**

16 The Parties do not believe that this action may be handled via expedited basis
 17 with streamlined procedures.

18 **Q. SCHEDULING**

19 The Parties believe that, generally, the scope, timing and sequence of future
 20 proceedings will depend upon this Court's ruling on Plaintiff's anticipated class
 21 certification motion and the scope and size of any class action group.

22 Plaintiff will move for certification upon completion of sufficient discovery,
 23 which the Parties have identified. Plaintiff believes he will require at least twelve (12)
 24 months to complete class certification discovery.

25 The Parties therefore propose that the Court set a Status Conference thirty
 26 (30) days from the date of the Court's ruling on class certification and that the Court
 27 set deadlines for future proceedings at that time. This will allow the parties to meet

1 and confer after the Court's ruling and to amend the Joint Status Conference Report
2 with a proposed plan governing proceedings for all issues remaining at that time.

3 **R. TRIAL**

4 The anticipated date and length of any trial of this matter will depend upon
5 Plaintiff obtaining sufficient discovery, this Court's ruling on Plaintiff's anticipated
6 class certification motion, and the scope and size of any class action group. At this
7 stage, the Parties believe it is premature to estimate how long a trial may take.

8 In her complaint, Plaintiff made a demand for trial of her claims by jury to the
9 extent authorized by law. Plaintiff still wants a jury trial.

10 **S. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR**
11 **PERSONS**

12 The Parties are unaware of any interested parties requiring disclosure pursuant
13 to Local Rule 3-16.

14 **T. PROFESSIONAL CONDUCT**

15 All attorneys of record for the parties have reviewed the Guidelines for
16 Professional Conduct for the Northern District of California.

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18 Respectfully Submitted,

19
20 Dated: January 30, 2020

MALLISON & MARTINEZ

21
22 By: /s/Hector Martinez

23 Stan S. Mallison
24 Hector R. Martinez
25 Leanna M. Sac

26 *Attorneys for Plaintiff*

27 Dated: January 30, 2020

FUSION LEGAL, PC.

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By: /s/ Leiann Laiks

Leiann Laiks

Attorneys for Defendants